UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT Novak, d/b/a Pets Warehouse and PetsWarehouse.com

Plaintiff,

No. CV 02 5164 (DRH) (WDW)

-v-

OVERTURE SERVICES, INC, GOOGLE, INC., INNOVATIVE MARKETING SOLUTIONS, INC., d/b/a KANOODLE.COM, NEEPS INC d/b/a THEFERRETSTORE.COM, JOHN HOLDEFEHR d/b/a JUDGE-FOR-YOURSELF.COM, BIOCHEMICS, INC. d/b/a DOCTORDOG.COM,

Defendants.

OVERTURE SERVICES, INC.,

Counter-claimant,

-v-

ROBERT Novak, d/b/a Pets Warehouse and PetsWarehouse.com

Counter-defendant.

DEFENDANT OVERTURE SERVICES, INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO PLAINTIFF ROBERT NOVAK D/B/A PETS WAREHOUSE AND PETSWAREHOUSE.COM

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Overture Services, Inc. ("Overture"), by and through its attorneys, hereby requests that Plaintiff, Robert Novak d/b/a Pets Warehouse and PetsWarehouse.com ("Novak") produce

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the documents and things described herein for inspection and copying at the offices of Brinks Hofer Gilson & Lione, 455 North Cityfront Plaza Drive, Suite 3600, Chicago, Illinois, 60611, at the time required by Rule 26 of the Federal Rules of Civil Procedure and in accordance with the Definitions and Instructions set forth herein.

INSTRUCTIONS AND DEFINITIONS

1. Novak is to produce all originals, drafts, copies and photographs of the documents requested.

2. The documents to be produced in response to this request include all documents within Novak's possession, custody or control. This includes documents in the possession, custody or control of his related companies, including but not limited to subsidiaries, attorneys, agents, employees, investigators, consultants, and experts, as well as any firm, company, corporation or business in which Novak owns a controlling interest or over which Novak exercises control in fact. Novak is required to use reasonable diligence to locate the documents, including those that are not in Novak's immediate possession.

3. If Novak claims that the attorney-client privilege, or any other privilege, doctrine or reason for withholding a document is applicable, please set forth in writing: (a) the date of the document; (b) the type of document; (c) the subject matter or the document; (d) the name, employment, and title of each person who prepared or received the document or any copy thereof; and (e) the basis for the claim of privilege or other ground for withholding the document. If it is claimed that only part of the document is privileged or otherwise need not be produced, please produce the remaining part of the document.

4. If any document to be produced has been lost, discarded, transferred to another person or entity, destroyed, or otherwise disposed of, please set forth in writing: (a) the date, name and subject matter of the document; (b) the name, employment and title of each person who prepared, received, reviewed, or had custody, possession, or control or the document; (c) all persons with knowledge of the contents or any portion of the contents of the document; (d) the previous location of the document; (e) the date of disposal or transfer of the document; (f) the reason for disposal or transfer of the document; and, if applicable, (g) the manner of disposal of the document; or, if applicable, (h) the names and addresses of the transferees of the document.

5. Documents shall be produced in an order corresponding to each paragraph of this document request or, in the alternative, they may be produced in the same order as they are maintained in the ordinary course or business. If there are no documents or things responsive to a particular request, Novak shall so state in writing in its response.

6. These requests shall be deemed continuing, so as to require further and supplemental production promptly if Novak receives, generates or discovers additional documents called for herein between the time of the production and the time of any motion or evidentiary hearing.

DEFINITIONS

1. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

2. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

3. The term "person" is defined as any natural person or business, legal or governmental entity or association.

4. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

5. The conjunctive shall include the disjunctive, and the disjunctive shall include the conjunctive.

6. The singular shall include the plural, and the plural shall include the singular.

7. The term "Novak" means Plaintiff Robert Novak d/b/a Pets Warehouse and PetsWarehouse.com and any related companies within the meaning of Section 1127 of the Lanham Act.

8. The term "Novak Marks" refers to any trademarks or service marks which Novak believes are being infringed, diluted, misappropriated or unfairly competed against as a result of Overture's activities alleged in the Complaint.

9. The "Complaint" refers to the Complaint filed by Novak on September 24, 2002, under the caption *Robert Novak v. Overture Services, Inc. et al.*, Civil Action No. CV 02 5164.

DOCUMENTS REQUESTED

REQUEST NO. 1:

All documents identified in, relating to, or which were relied upon in responding to Overture's First Set of Interrogatories to Novak.

REQUEST NO. 2:

All documents upon which Novak will rely in this lawsuit.

REQUEST NO. 3:

All documents referring to any litigation involving the Novak Marks.

REQUEST NO. 4:

All documents concerning any consumer complaints or comments to Novak that resulted from Overture's activities alleged in the Complaint.

REQUEST NO. 5:

All documents concerning the trademark registrations or applications covering the Novak Marks, including, but not limited to, all documents filed with and received from the United States Patent and Trademark Office and the trademark authorities of any states.

REQUEST NO. 6:

All documents concerning the creation, selection, development and adoption of the Novak Marks and Novak's decision to use the Novak Marks.

REQUEST NO. 7:

All documents concerning any licenses, assignments, other transfers of ownership, and security interests in connection with one or more of the Novak Marks.

REQUEST NO. 8:

All documents concerning Novak's first use of the Novak Marks in the United States.

REQUEST NO. 9:

All documents concerning any products or services sold or to be sold under the Novak Marks.

REQUEST NO. 10:

All documents concerning any market research or other studies or investigations, whether formal or informal, relating in any way to the Novak Marks or the goods or services with which the Novak Marks are used.

REQUEST NO. 11:

All documents concerning the dollar volume or sales of goods or services sold under the Novak Marks in the United States from the first such sales to date.

REQUEST NO. 12:

All documents concerning the dollar volume of advertising and promotional expenditures made in connection with goods or services sold under the Novak Marks in the United States from the first such expenditures to date.

REQUEST NO. 13:

Specimens, originals when possible, of all advertising and promotional materials relating to goods or services sold or intended to be sold under the Novak Marks in the United States, through the Internet or other means, including but not limited to labels, packaging, flyers, hangtags, direct mail pieces, point of sale pieces, signs, posters, newspaper advertisements, magazine advertisements, media articles, catalogs, circulars, leaflets, brochures, television and radio commercials, and any other publicly distributed materials.

REQUEST NO. 14:

All documents concerning any trademark searches which were conducted by or for Novak in connection with the Novak Marks in the United States, including searches of databases such as Westlaw, Lexis, Nexis, Dialog and Trademarkscan, and searches conducted by search firms such as Thomson & Thomson.

REQUEST NO. 15:

All documents concerning reports, articles or other references to Novak or his goods or services in magazines, newspapers, other print or on-line publications, or television or radio programs.

REQUEST NO. 16:

All documents concerning governmental, industry, or consumer complaints or investigations concerning Novak or his goods or services.

REQUEST NO. 17:

All documents concerning any modification of the Novak Marks as used or intended to be used in connection with Novak's goods or services, including all documents relating to the reason(s) such modification(s) were made.

REQUEST NO. 18:

All documents concerning the media (e.g., online, mail order, Novak or other retail outlets) through which goods and services are sold or offered for sale under the Novak Marks.

REQUEST NO. 19:

All documents concerning any third party, of whom Novak is aware, who is using or has used a name, trade name, trademark or service mark that includes the terms "PETS" and/or "WAREHOUSE" either alone or in combination with other words or symbols.

REQUEST NO. 20:

All documents concerning the number of Internet users that have purchased or may potentially purchase products or services under the Novak Marks from Novak over the Internet.

REQUEST NO. 21:

Historical information, on a yearly, monthly and daily basis, that relates to the number of visits to Novak's Web site by Internet users, and the number of those visits that result in revenue to Novak.

REQUEST NO. 22:

All documents referring or relating to use of the Novak Marks by any entity other than Novak.

REQUEST NO. 23:

All documents referring or relating to Novak's bankruptcy filings.

REQUEST NO. 24:

All documents referring or relating to quality control Novak has exercised over licensees use of the Novak Marks.

REQUEST NO. 25:

All documents concerning Novak's allegations as they relate to "Count II: Defendant's Kanoodle, Google and Overture Infringing Acts" of the Complaint that Overture is liable for infringing Novak's rights in the Novak Marks.

REQUEST NO. 26:

All documents concerning Novak's allegations as they relate to "Count IV: Unfair Competition as to all Defendants" of the Complaint that Overture is liable for unfair competition.

REQUEST NO. 27:

All documents concerning Novak's allegations as they relate to "Count V: Trademark Infringement as to all Defendants" of the Complaint that Overture is liable for trademark infringement.

REQUEST NO. 28:

All documents concerning Novak's allegations as they relate to "Count VI: Trademark Dilution as to all Defendants" of the Complaint that Overture is liable for trademark dilution.

REQUEST NO. 29:

All documents concerning Novak's allegations as they relate to "Count VII: Trademark Dilution as to all Defendants" of the Complaint that Overture is liable for trademark dilution.

REQUEST NO. 30:

All documents concerning Novak's allegations as they relate to "Count VIII: Trademark Infringement, Unfair Competition and Misappropriation as to all Defendants" of the Complaint that Overture is liable for trademark infringement, unfair competition and misappropriation.

REQUEST NO. 31:

All documents concerning Novak's allegations as they relate to "Count IX: Tortious Interference with Prospective Advantage as to all Defendants" of the Complaint that Overture is liable for tortuous interference with prospective business advantage.

REQUEST NO. 32:

All documents concerning Novak's allegations as they relate to "Count X: Common Law – New York – Unfair Competition and Unjust Enrichment as to all Defendants" of the Complaint that Overture is liable for common law unfair competition and unjust enrichment.

REQUEST NO. 33:

All documents concerning Novak's allegations as they relate to "Count XI: Trademark Infringement – False Designation of Origin 15 U.S.C Section 1125(a) (New York General Business Law Sec 360-1)" of the Complaint that Overture is liable for trademark infringement under New York's general business law.

REQUEST NO. 34:

All documents concerning Novak's allegations as they relate to "Count XII: Deceptive Acts and Practices" of the Complaint that Overture is liable for deceptive acts and practices under New York's general business law.

REQUEST NO. 35:

All documents concerning Novak's allegations as they relate to "Count XIII: Dilution Under State Law" of the Complaint that Overture is liable for dilution under New York state law.

REQUEST NO. 36:

All documents concerning Novak's allegations in the Complaint that Overture's alleged improper use of the Novak Marks is intentional, deliberate and/or willful.

REQUEST NO. 37:

All documents concerning the "substantial control" Overture exercises over its search engine results as alleged in paragraph 31 of the Complaint.

REQUEST NO. 38:

All documents concerning how Overture allegedly "actively assists competitors" of Novak as alleged in paragraph 32 of the Complaint.

REQUEST NO. 39:

All documents concerning how Overture allegedly conducts a "bait and switch" of Novak's actual and potential customers as alleged in paragraph 32 of the Complaint.

REQUEST NO. 40:

All documents concerning the "initial interest confusion" alleged in paragraph 62 of the Complaint.

REQUEST NO. 41:

All documents concerning the "blurring" alleged in paragraph 63 of the Complaint.

REQUEST NO. 42:

All documents concerning the "bad faith" alleged in paragraph 64 of the Complaint.

REQUEST NO. 43:

All documents concerning the "tarnishment" alleged in paragraph 87 of the Complaint.

REQUEST NO. 44:

All documents concerning specific customers that Novak lost based on Overture's activities as alleged in the Complaint, including the identity of the customer and the revenue lost.

REQUEST NO. 45:

All documents referring or relating to Novak's contention that the "Petswarehouse mark is inherently distinctive" as alleged in paragraph 14 of the Complaint.

REQUEST NO. 46:

All documents referring or relating to Novak's contention that "the Petswarehouse mark is famous and enjoys enormous secondary meaning" as alleged in paragraph 14 of the Complaint.

REQUEST NO. 47:

Historical monthly financial statements, including Novak's income statements, balance sheets and cash flow statements, including any such financial statements that specifically address Novak's sales, revenues and profits under the Novak Marks resulting from sales on the Internet.

REQUEST NO. 48:

Historical monthly financial statements, including internal financial reports, that detail all fixed and variable costs relating to sales of Novak products and services under the Novak Marks on the Internet.

REQUEST NO. 49:

Financial documents that provide, on a yearly, monthly and daily basis, the total number of Internet sales and the dollar value of those sales of Novak products or services under the Novak Marks.

REQUEST NO. 50:

Financial documents that provide the total number of Internet sales, on a yearly, monthly and daily basis, to new customers of Novak products or services under the Novak Marks.

REQUEST NO. 51:

All documents concerning any instance in which a member of the public has been, or may have been, confused as a result of Overture's activities alleged in the Complaint, including without limitation all documents describing each such instance of confusion.

REQUEST NO. 52:

All documents referring or relating to defendants Google, Inc., Innovative Marketing Solutions, Inc. d/b/a Kanoodle.com, John Holdefehr d/b/a Judge-For-Yourself.com, and Biochemics, Inc. d/b/a DoctorDog.com.

REQUEST NO. 53:

All documents referring or relating to the geographic locations of customers of Novak products or services under the Novak Marks.

Date: October 27, 2004

By: Scott Slavick

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Attorneys for Defendant,
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CERTIFICATE OF SERVICE

I hereby certified that on October 27, 2004, I caused **Defendant Overture Services, Inc.'s First Request for Production of Documents and Things to Plaintiff Robert Novak d/b/a Pets Warehouse and PetsWarehouse.com** to be dispatched via Overnight Courier to the following:

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